G. R. S. 58]

Previous references.

Jr No 67-12 881-4
3 No 82 of 1904

1914.
(Mugrai)

File No. 138 / 1914
Serial Nos. 3 — 6

Later references.

Mugy 138-14 (dt 7/4/18)
Loan 59-36(15)

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-6

Part B for Sept 15.

SUBJECT.

Bill for Rs 7 being the fees due to the Govt Advocate for defending a case relating to the estate of the late Nagadi Krishnappa.

GPB—10,000—23-3-15

G. R. S. 11] 1914

GENERAL AND REVENUE SECRETARIAT.

(Inwards

NOTES.

File No 138/1914

FILE HEADING.

Engaging the services of the first Advocate for defending the appeal in the Chief Court instituted by the Lingadaiar of the Chikballapur Kasabha Sahaya Fund

From

The First Advocate in Mysore.

No. 367 Dated 17.6.1914 Received

Diary No 2069	Enclos 1	Spare Copies.	Serial No 3

BRIEF ABSTRACT OF LETTER.

Reports that the civil appeal having been transferred to the file of the Addl. Dist. Judge, Bangalore the Addl. Judge pronounced judgment in the same on the 8th ult allowing the appeal and remanding the case to the lower Court for further disposal, and forwards a Copy of the judgment in the appeal.

NOTES AND ORDERS.

5/ In Govt Pro. no. 4166 dy 26th March 906 it was directed that the properties willed by the late Krishnappa of Chikballapur for charitable purposes, be taken under

NOTES—First Sheet

GPB—20,000—3-8-11

G. R. S. 12]

General and Revenue Secretariat. | File No. of 191

Serial No.

Govt management.

2) Original Suits no. 96 and 97 of 1905-06 for the recovery of certain amounts due to Chickballapur Lakshmisahaya Bank from the estate of the deceased Krishnappa, were dismissed. The Bank appealed to the Chief Court against the judgments in the above 2 cases, and succeeded in one of the appeals. (No. 96 of 1905-06) Thereupon the execution petition filed in the Chickballapur Munsiff's Court by the liquidator of the Bank, was decided in favor of the Kolar Dy. Commr., and against this order, the Bank preferred an appeal to the Chief Court. In G.O. no. 756-9 Dy 12-10-1911, the Govt Advocate was asked to defend the case in the Chief Court.

The Govt Advocate states that the appeal having been transferred to the Dist. Judge's Court at Bangalore, the Dist. Judge allowed the appeal and remanded the case to the Lower Court for further disposal. The Dist. Judge has held that the persons estate of the judgment-debtor

NOTE—Contn. sheet.

GPB—25,000—22-3-15

(3)

G. R. S. 12]

General and Revenue Secretariat. | File No. 135 of 191

Serial No.

in this case now in the hands of the judgment-debtor's devisee is liable for the just debts of the testator and can be proceeded against by the Bank. He has directed that the execution proceedings be remanded to the lower Court for further disposal, the costs of the appeal being borne by the respdts.

Submtd.
MML 1157
5.7.1915

Return a copy for reps.
dee
8.7.15

forward copy judgment. Draw his attention to para 2 of G.O. No 1096-S dated 17.5.1913 and request the same may be reported. Called for.
dee
7.7.15

Submtd. with a Dft.
MML 1157
8.7.1915

9.7.15 After issue put the file again for Bdt & return
dee
21/7/15

4 No. 274 dt 27/7/15 - to Dr of Kolar requesting Memdum of the reps called for in G.O. 1096

NOTE—Contn. sheet.

GPB—25,000—22-3-15

G. R. S. 12]

General and Revenue Secretariat.

File No. 138 of 1914

Serial No.

7) Submitted to the Trust member.
8/8/15 for favour of perusing the appeal judgment.
Lee
11.8.15

J Mis 229-15

Is the D.J's judgt correct or is it open to appeal? Br III to if necessary Govt Adv to be consulted.
16/8/15

I, MT 17/8/15

Branch III Secd.

Reg. 18/8/15

It seems to me that the opinion of the District Judge is correct. He decrees. The decision is in accordance with the general principles of law and equity. Mr Mayne himself states that "An obligation to pay the debts of the person whose estate a man has taken is declared with equal positiveness. It does not rest, as in the case of Sons upon any duty to which the deceased at any cost, but upon the broad equity that he who takes the benefit should take the burthen also," and quotes Jagannadhya in support of this statement.

NOTE—Contn. sheet.

GPB—25,000—22 3-15

G. R. S. 12]

General and Revenue Secretariat.

File No. 138 of 1914.

Serial No.

"He who takes the estate of a proprietor leaving no Son must pay the debts of the deceased."

This principle is one not peculiar to Hindu Law alone, but one well known in the Civil Law. In the case of universal succession, is one in point. This principle that a universal legatee or donee is liable for the debts of the testator or donor to the extent of the assets received by him is recognised also by the Legislature in British India. (vide S 128 of the Transfer of Property Act, and the Hindu Wills & Probate Administration Act).

Thus both on the principles of Hindu Law the general principles of Equity, it is clear that the view of the Dt. Judge is correct.

The cases relied upon by the Govt. Advocate do not seem to be quite on point. The Madras case referred to in the judgment is one in which there was a transfer of certain promissory notes by a debtor to his wife. The case was remanded to the lower Court to ascertain whether the transfer was really made with a fraudulent intent of depriving the plaintiff of the means of recovering his debt, and whether the debtor had other properties.

The Bengal case as reported in

NOTE—Contn. sheet.

GPB—25,000—30 4 15

A. R. S. 12]

General and Revenue Secretariat.

Jmz File No. 138 of 1914-18

Serial No

Sutherland does not contain full details. But the case was one in which the plaintiff who held under a will sued for a declaration of his title as against a purchaser of the testator's right, title and interest at an executor's sale held 14 years after the execution of the will, in a suit against a third party as representative of the testator, and in which the plaintiff was not a party.

The case does not seem to establish the principle that a universal legatee is not liable for the debts of the deceased testator.

Eg
27.8

Dist. Mentor)

Please get the Govt. Advocate's Opinion. H.M.Z 2/9/15

Govt
4/9/15

Forwarded with Compliments to the Government Advocate for favour of Opinion

Secretary to Government

Mem 2-0 No 2
Eg 6.9.15

NOTE– Contn sheet

GPB—20,000—30 6 15

Eg 9/9/15

for Secy to Govt Rev Dept

G. R. S. 12]

General and Revenue Secretariat.

File No. 138 of 1914

H. O. 60 of 15-16

VII 6/9 R"

Serial No.

§105 of the Probate act recently passed into law in Victoria, provides that debts of every description must be paid before any legacy. But the case in which such occurred some years ago was to be dealt with under the provisions of the Probate act. There being no statutory law in force applicable to the case, it must be decided according to the Hindu Law as in Queen Vers. to which specific rule of Hindu law is, according to Imperial Statute 5 & 11 Chap. 23 Reg. I. 1833. The general rule of Hindu law is that a who takes the family property becomes liable to the debts of the testator. In short who ever takes it as Universal with all the rights distributive and duties to it, and payment of debts is one of the liabilities annexed to the Estate i.e. who takes it - See Mayne's Hindu Law - 8th Ed. page 424 § 327 The question is that of the Estate devolving on the sole inheritance

NOTE—Contn. sheet.

GPB—20,000—30 6 15

G. R. S. 12]

General and Revenue Secretariat.

File No. 138 of 191 61

Serial No.

it passes into the hands of the devisee under a will he is in a better position with respect to the debts of the testator. There is a dictum in 21 W.R. 153 (1872) that parties in posn under a will is a voluntary transfer without any consideration except that of family affection are not thereby bound to pay the debts of the former holder, whether the donee's possession began at the date of the instrument called a will, or upon the death of the testator. But as observed by Mr Mayne the case was argued and decided purely upon principles of English law & the Judge regard stating that the English law would not apply does not state what the Hindu Law is. The contrary opinion expressed by Pontifex J in I.L.R 4 Cal 497 is also founded upon arguments drawn from English statutes. But the following observations of the learned Judge in 4 Cal 497 are pertinent

NOTE—Contn. sheet.

GPB—25,000—30-4-15.

G. R. S. 12]

General and Revenue Secretariat.

File No. 138 of 1914

Serial No.

" a disposing power by will unknown in primitive times came into existence by a kind of evolution or development of law and it would be natural that by the same process the devisee should with respect to his testators Creditors be saddled with the same liabilities as the heir had theretofore been saddled with respect to the Creditors of his ancestor ".

Perhaps both in Equity & in Jewish Law he who takes the testamentary becomes liable for the debts of the testator & I am inclined to think that the District Judge's view is Correct. Otherwise it is easy for a testator to defraud his creditors by devising his properties under a will instead of dying intestate.

6. 9. 15

Sd. Jonakumar
for Taxation.

NB. appeal time will expire tomorrow

Sd

NOTE—Contn. sheet.

GPB—25,000—30 4 15.

G. R. S. 12]

General and Revenue Secretariat.

File No. 138 of 1914

Serial No

Subd Str. memo
Sec
6.9.15

The matter may be dropped & the D J's decision accepted.

But Please ~~accept~~ make certain that the costs incurred ~~by~~ all come from the estate & do not fall on Govt. If there is no substantial surplus, we must get out of the concern as soon as we can.

8/9/15 —

10/9 Send periodical reminders
8/9/15 once a month at least about Subd's report.

Sec
8/9/15

2/ From, the Govt Advocate in Mysore
Letter no. 33 dt 19-7-15.
Submits in conn of Serial 3, a bill for Rs 7 for the fees due to him.
Submts. with a Dft order Sanctioning.

Dft (916)
14.9.15.

Dft M

NOTE—Contn. sheet.

GPB—20,000—30-6 15

G. R., S. 12]

General and Revenue Secretariat.

File No. 38 of 191 4

Serial No

the Bill sent up by the Govt. Advocate.

BG
14.9.15

Subd. by V. member

15-9-15

Draft appd: by First member
MSJ 17.9.15

MT 18/9/15

MS/15

6 No 872-4 dt 21.9.15, to Comptr
& Govt; Govt-Advocate - Dr, Kolar.
Sanction the bill amtg to Rs 7/-
& pass the same to Comptr for
audit & retn & Dy Com for
payment-, the charge being met
from the funds of the Estate
[illegible]

Revenue Secretary.
9/A2)28.9.15

NOTE--Contn. sheet.

GPB—20,000—30-6 15

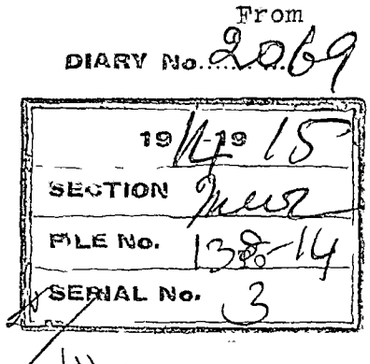
No. 387

Civil - ane

Office of the Government Advocate in

Bangalore. Dated 17th June 1915.

From



VII
Misc
15/6

av

The Government Advocate in Mysore,

B a n g a l o r

The Offg. Srecretary to the Government of

H.H.the Maharaja of Mysore General and

Revenue Departments.

Sir,

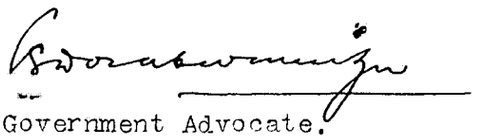
Adverting to para 2 of Covernment Order — No.756-9/Muz.138-14-2 dated 12th October 1914, directing to report the result of an appeal prefered by one Venkatramanayya the Liquidator of the Chikballapur Lakshmisshaya Bank, against the order of the Munsiff of Chikballapur in Execution Petition No.131 of 13-14, I have the honor to — report that the said aopeal having been transfered to the Court of the District Judge, Bangalore, the District Judge pronounced judgement in the same on the 8th Instant, allowing the appeal and remanding the case to the Lower Court for further disposal.

2. A copy of the judgement in the appeal (No. 47 of 14-15.) is herewith forwarded.

I have the honor to be

Sir,

Your most obedient servant.



Government Advocate.

IN THE COURT OF THE DISTRICT JUDGE, BANGALORE DIVISION.

Bangalore dated 8th June 1915.

Present. R.B.Plumer, Esq., Barrister-at-Law,
District Judge.

REGULAR APPEAL NO: 47 of 1914-15.

Appellant		Respondents.
Chickaballapur Lakshmi-		1. Lakshmamma
Sahaya Bank, by Liquidator	Vs.	2. Naranappa
Venkataramanaya.		3. Deputy Commissioner Kolar District.
(Petitioner).		(Opponents).

Appeal from the order of the Munsiff of chickballapur in Execution Case No: 171 of 1913-14 on the file of his Court. This was received in this Court by transfer from the Chief Court of Mysore for disposal.

J U D G M E N T.

The only point in this appeal is whether the judgment-creditor can proceed against the assets of his deceased judgment-debtor in the hands of a devisee. The learned Munsiff has found that he cannot and that on the death of of the testator the devisee became at once vested with the property devised freed from all liberty for the testators just debts. Hence this appeal on the ground that the learned Munsiff erred in his Law.

For the 3rd respondent Mr. C.S.Doraswami Iyer relied on a passage at p: 413, 6th Edn (426, 7th Edn) Mayne's Hindu Law to the effect that it has been held at Madras that a voluntary transfer of property by way of gift if made bona fide and not with intent to defraud creditors is valid against creditors.and what the deceased could have done during his life it would probably be held he could also do by Will. Again in an early Bengal High Court case Ram Ootum v Oomesh 21 Suth. 155 it was held that a devisee could not

not be held liable for the debts of the testator in respect of his possession of the part of the estate of devised.

This ruling was dissented from by Posstifex J. in a case Greender v Mackintosh I.L.R. IV Calcutta 897 and the ratio decidendi in the earlier case is not stated in Mayne and I have not the case itself to refer to. It seems to me however that even leaving aside the provisions of the Hindu Wills Act extending to Hindus the provisions of the Indian Succession Act, the ordinary principles of equity apply with equal force to a Hindu Will as to an English Will and the fundamental equitable principles in respect of the effect of a Will upon the estate devised or legacy bequeathed so far as the testator's debts are concerned is that the testator must be just before he is generous and that the devisee or legatee who takes the benefit must also share the burden. This view is also supported by the authority of Trevelyan's Hindu Law 2nd Impression p. 308 where it is stated that the Hindu Law like other systems of Law requires the person who succeeds to the property of another as heir or asdevisee to pay the debts of such other person to the extent of the assets received by him.

I am therefore of opinion opinion that the estate of the judgment-debtor in this case now in the hands of the judgment-debtor's devisee is liable for the just debts of the testator and can be proceeded against and the judgment-creditor i.e. the appellant petitioner.

I accordingly set aside the order of the Lower Court and I direct that the execution proceedings be remanded to the Lower Court for further disposal. Costs of this appeal to be borne by the respondents.

Pronounced in Open Court
Bangalore 8/6/1915.

(sd) R.B.Plumer,
District Judge.

'COPY'

District Judge.

G. R. S. 26]

Re the recovery of the bills by the late Kista of Chickballapur for charitable purposes

File No. 138 1914
Serial No. 4

Diary No. of letter replied to 2069

No. 274 Emp/Ca

General and Revenue Secretariat

( )

, the *191* .

To The Dy. Commr Kolar Distt

Date of issue 27.7.1915

Signed by M^r G Aravamudachar

Adverting to Govt Pro. no. 756-9/Miz.2.138-14-2 dy 12th October 1914 sanctioning the engagement of the Govt Advocate to defend the appeal in the Chief Court preferred by the Liquidator of Chickballapur Lakshmi Sahaya Bank against the order of the Munsiff of Chickballapur in Execution

over.

SUBJECT.

Petition no. 131 of 1913-14, has the honor to forward herewith a copy of the judgment in the case received with Govt. Advocate's letter no. 389 dt 17th June 1915, and to request that the submission of the report called for in Para 2 of Govt Pro. no. 2096-8 dt 17th may 1913 about an account of the property realised, and expenses incurred etc. may be expedited.

By order
Sd
22.7.15
for Secretary

DPH

RC
7.15

List of enclosures

Copied by

Examined by

GPB—25,000—4 3 13

No. 33

Ans. one

Office of the Government Advocate in Mysore,

Bangalore dated, 19th July 1915.

DIARY No. 134

19/JUL/16
SECTION
FILE No. 1382/14
SERIAL No. 5

From,

C. S. Doraswami Iyer Esq., B.A., B.L.,
Government Advocate in Mysore, Bangalore.

To,

The Offg: Secretary to the Government of H.H. the Maharaja of Mysore, General & Revenue Depts.

Sir,

In continuation of this office No.339 dated 17th June 1915, intimating result in R.A.No.47 of 14-15 on the file of the District Court, Bangalore, in pursuance of Government Order No.S.756-9/Muz.138-14-2 dated 12th October 1914, I have the honour to submit herewith for sanction of Government my bill for Rs.7/- duly -- countersigned by the District Judge.

I have the honour to be,

Sir,

Your most obedient servant,

C S Doraswamy Iyer

Government Advocate.

Sanctions a bill for Rs 7
being the fees due to the
Govt Advocate in Mysore

G.R.S. 28]

File No. 138
Serial No 1714
6

Diary No. of letter replied to 134

Proceedings of the Government of His Highness the Maharaja of Mysore

GENERAL AND REVENUE SECRETARIAT.
(ಸಾಮಾನ್ಯ)

READ—

, *the* 191 .

Govt Pro no 756-9/Miscl
138-14-2 dy 12th October 1914
Sanctioning the engagement
of the Govt Advocate for

Date of issue 21 9 915

Signed by Mr C Aravamudachariar

~~ORDER THEREON—No.~~
defending the appeal in
Chief Court preferred by
the Liquidator of Lakshmi
Sahaya Bank for the
recovery of certain amounts
due

SUBJECT.

GPB—50,000—1-12-12

alleged to be due from
the estate of the late Nayadi
~~Jamadar~~ Krishnappa.

Letters nos 387 and 33
Dt 17th June 1915 and 19th July 1915
from the Govt Advocate
in my case reporting that
the said appeal having
been transferred to the Court
of the Distt Judge, Bangalore,
~~the Distt Judge pronounced~~
~~Judgment on the~~ on the June on
~~the 8th June last allowing~~
was allowed and
the appeal ~~and remanding~~
remanded
the case to the Lower Court
for further disposal, and
for sanction a fee
submitting ~~his~~ bill for Rs 7
duly countersigned by the
Distt Judge.

Order thereon — No 872-4 Enc 1 Dy
Trans 138-14-6

The bill amounting to Rs 7 21.9.1915
is sanctioned and forwarded
to the Comptr for audit and
return to the Dy. Commr

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation sheet draft form.*)

for payment, the charge being made from the funds at the credit of the late ~~Estate of the deceased~~ Krishnappa's estate

Sd/- for Rev. Secretary.
15/9/15

Dft)
17/9/15

To,
The Comptr., Mysore
with the bill
" Govt Advocate in
" Dy. Commr., Kolar Dt.